

### **REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons which follow:

The present application includes Claims 15-28 all of which stand rejected.

Claims 15-17, 19-22 and 25 are amended presently. Claims 18, 23, 24 and 26-28 are cancelled without prejudice. Claims 29 to 38 are newly added. Support for the new claims and the amendments to claims 15-17, 19-22 and 25 can be found at least in Paragraphs [0008], [0011], [0019], [0026] and [0027] and in the originally submitted drawings.

With the foregoing amendments, claims 15-17, 19-22, 25 and 29-38 are pending in this application.

#### **Objection to the Drawings**

The drawings are objected to because a certain element or elements recited in claim 24 are not labelled. In view of this objection, claim 24 is being cancelled without prejudice. Accordingly, the drawing objection is moot, and the drawings are now in acceptable form.

#### **Objection to the Specification**

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. The Examiner states that what is claimed in claim 24 is not described in the specification. In view of this objection, claim 24 is being cancelled. Accordingly, the objection to the specification is moot, and the specification is now in acceptable form.

#### **Claim Objection**

The Examiner states that the numbering of the claims is not in accordance with 37 CFR 1.126. He states that when new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented.

Applicant respectfully submits that the numbering of the previously presented claims, indeed, meets the requirements of 37 CFR 1.126. More specifically, claims 16 to 29 as previously presented were supposed to replace claims 1-15 that were received by the European International Preliminary Examination Authority (IPEA/EP) on March 22, 2006. However, Applicant respectfully accepts the Examiner's claim objection without prejudice in order only to avoid creating confusions unnecessarily. Renumbering the claims back again "16 to 29" would be confusing since the Office Action has been issued using the new claim numbers that have been assigned by the Examiner. Accordingly, claims 16, 17, 19-22 and 25, as renumbered by the Examiner, are being amended in terms of their dependency to allow them to be aligned with the new claim numbers.

#### **Rejection under 35 USC § 103**

Claims 15-18, 21, 22, 24 and 26-28 are rejected under 35 USC §103(a) as being unpatentable over Huspeka (US 5699959) in view of Beder (US 3027060.) Claims 19 and 20 are rejected under 35 USC §103(a) as being unpatentable over Huspeka in view of Beder, further in view of Mardon (GB 406511.) Claims 23 and 25 are rejected under 35 USC §103(a) as being unpatentable over Huspeka in view of Beder, further in view of Wolf (US 1812311.) In view of these rejections, claim 15 is amended.

- **Claim 15**

Claim 15, as amended, recites in part:

... said open top container comprises at least one reinforced handle aperture struck from at least one of said reinforcing panels, and wherein said at least one handle aperture is located at an elevation above said top closure, wherein said top closure comprises at least one end flap hingedly connected thereto, and said at least one end flap is folded downward to avoid covering said at least one handle aperture.

Applicant submits that claim 15 is now in condition for allowance for the following reasons:

The Proposed Modification Would Render the Prior Art Unsatisfactory for Its Intended Purpose

The recitations which have been newly added to claim 15 are similar to those of a combination of claims 18 and 23 both of which have been canceled. The Examiner rejects claim 23 based on Huspeka modified in view of Beder, further in view of Wolf. Huspeka indeed discloses a carton wherein open top container 12 comprises at least one aperture 42 struck from at least one of reinforcing panels 38, and wherein the at least one aperture 42 is located at an elevation above top closure 44 (Figure 9). Huspeka's top closure 44 even comprises at least one end flap 50. However, Huspeka fails to disclose a downwardly folded end flap for the top closure 44. As such, the Examiner relies upon a combination of Huspeka and Wolf to reject claim 23. The Examiner states "[i]t would have been obvious to one of ordinary skill in the art ... to provide Huspeka's top closure with a flap folded downward as taught by Wolf." Applicant respectfully disagrees with the Examiner. Applicant submits that claim 15 as amended is allowable because the Examiner's proposed modification would render Huspeka's carton (i.e., the prior art invention being modified) unsatisfactory for its intended purpose (MPEP 2143.01). Huspeka requires that "[p]eripheral flange 46 includes ... projections 48 adapted to be located in or pass through openings 42 to retain lid 14 in container 12" (Column 3, Lines 22-24). If Huspeka's end flap 50 were folded downward to avoid covering the adjacent aperture 42, Huspeka's carton would be inoperable for its intended purpose because the projection 48 would no longer be able to engage the aperture 42.

The Cited References Fail to Disclose a Handle Aperture

The Examiner states that Huspeka discloses an open top container comprising at least one aperture 42 that can be inherently used as a reinforced handle aperture. Indeed, Huspeka's apertures 42 may be used as handle apertures when the lid or top closure 44 is taken away from the open top container 12. However, it is respectfully submitted that claim 15 claims a two-part carton in which a top closure is connected to an open top container and wherein at least one

handle aperture of the open top container is located at an elevation above the top closure. Huspeka's apertures 12 are closed by the projections 48 as soon as the lid 44 is connected to the container 12 (see Figures 5, 8 and 9). As such, Huspeka fails to disclose an aperture that can be used as a handle aperture when the top closure 44 is connected to the container 12. All the other three references, Beder, Mardon and Wolf, also fail to disclose a handle aperture. Accordingly, no combination of Huspeka, Beder, Mardon and Wolf can create the carton of claim 15.

For the above reasons, claim 15 is believed allowable.

- Claims 16, 17, 19-22 and 25

Claims 16, 17, 19-22 and 25 depend, either directly or indirectly, from allowable claim 15, and thus they are also allowable.

#### **New Claims**

New claims 29-38 depend, directly or indirectly, from allowable claim 15, and thus they are also allowable.

#### **Conclusion**

Applicant believes that the present application is in condition for allowance. Favourable reconsideration of the application is respectfully requested.

If any fees are due in connection with the filing of this response, including any excess claim fees, such fees may be charged to Deposit Account No. 132500. If a fee is required for and extension of time under CFR § 1.136 that is not accounted for above, such an extension is requested and the fee may also be charged to the above deposit account.

Respectfully submitted,

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